

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 7:19-CV-00403
)	
Plaintiff,)	CIVIL
)	
vs.)	McAllen, Texas
)	
FISHER INDUSTRIES, INC,)	Thursday, January 9, 2020
ET AL,)	
)	(1:45 p.m. to 1:51 p.m.)
Defendants.)	
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NORTH AMERICAN BUTTERFLY)	
ASSOCIATION, ET AL,)	
)	
Plaintiffs,)	CASE NO: 7:19-CV-00411
)	
vs.)	
)	
WE BUILD THE WALL, INC,)	
ET AL,)	
)	
Defendants.)	
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RULING OF COURT

BEFORE THE HONORABLE RANDY CRANE,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

Court Recorder [ECRO]: Rick Rodriguez

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P.O. Box 8365
Corpus Christi, Texas 78468
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Proceedings recorded by electronic sound recording;
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APPEARANCES:

For Plaintiff:

PAXTON WARNER, ESQ.
Assistant United States Attorney
1701 W. Business Hwy. 83
Suite 600
McAllen, TX 78501

JAVIER PENA, ESQ.
203 S. 10th Avenue
Edinburg, TX 78539

For Defendants:

MARK J. COURTOIS, ESQ.
Funderburk Funderburk Courtois
2777 Allen Parkway, Suite 1000
Houston, TX 77019

LANCE A. KIRBY, ESQ.
Jones Galligan Key & Lozano
2300 W. Pike Blvd., Suite 300
Weslaco, TX 78596

VICTOR V. VICINAIZ, ESQ.
Roerig Oliveira Fisher
10225 N. 10th St.
McAllen, TX 78504

1 McAllen, Texas; Thursday, January 9, 2020; 1:45 p.m.

2 (Ruling of Court)

3 **THE COURT:** The court's prepared to rule if that's
4 what you-all would like. It sounds like maybe there is some
5 room for negotiation but if not, the impediment to that if you-
6 all want to talk one last time, otherwise the court's ready to
7 rule and make a decision. All right.

8 **MR. SPEAKER:** We're ready for a ruling, your Honor.

9 **THE COURT:** All right. So in both of these cases
10 it's the burden of the plaintiff who's asking for this
11 extraordinary relief before a trial on the merits to prove by a
12 preponderance of the evidence the four elements required for a
13 preliminary injunction or a temporary restraining order. Those
14 four elements are substantial likelihood that the movant will
15 eventually prevail on the merits; a showing that the movant
16 will suffer irreparable injury unless the injunction issues;
17 proof that the threatened injury to the movant outweighs
18 whatever damage the proposed injunction may cause the opposing
19 party; and four, a showing that the injunction if issued would
20 not be adverse to the public interest.

21 The focus of the testimony and evidence have been
22 mainly on the first two issues but I guess a little bit on
23 number three. There really isn't an junction the court doesn't
24 seem would have any adverse effect on the public interest but
25 it does infringe on property rights and private citizen but the

1 greater issues or I guess the easier issue to resolve here is
2 whether the government and the butterfly center have sustained
3 their burden of proving a substantial likelihood that they will
4 eventually prevail on the merits, and a showing that they will
5 suffer irreparable injury unless the injunction issues.

6 The court has heard evidence, multiple hearings from
7 various experts on the issue. And the court finds all that
8 evidence to be of any potential injury to be highly
9 speculative. The words by Mr. Tompkins today talked about
10 terms of whether there would be any damage to the butterfly
11 property was, and I quote, "not inconceivable." That's not the
12 burden of proof that is required under our standards that I
13 find to be speculative and not proof of a substantial
14 likelihood of success on the merits.

15 The case is a little bit different on the government
16 because they're having to show in this case that the no -- that
17 a permit is needed or permission is needed -- or I guess a
18 no-objection letter is needed and that one has not been
19 obtained. That's a given. But one -- but then to show that
20 there would be an infraction such that a no-objection letter --
21 I'm sorry -- that an objection letter would come -- I guess a
22 favor to get a no-objection letter the government would have to
23 show that there is some effect on the river in excess of the
24 tolerances that the tree prescribes. There has been legally
25 insufficient evidence presented by the government that there

1 would be any effect in violation of the treaty. From the
2 evidence presented by the government, the court found that
3 evidence -- I don't know that it was speculative. Dr. Mee
4 (phonetic) was just very candid. I found him to be a very
5 credible witness, very believable, credentialed, was very
6 candid in saying he doesn't have any evidence that this would
7 violate the treaty but further information might reflect that.
8 Again, that's speculation. And at this point of the
9 proceedings, the government has a burden of proving by a
10 preponderance that it has a substantial likelihood that would
11 prevail. That doesn't meet that burden.

12 As a consequence, the court is not going to grant the
13 request for a preliminary injunction by the United States
14 government and denies the request for a temporary restraining
15 order as sought by the plaintiffs in the butterfly case.

16 Obviously things can change. These denials are
17 without prejudice. If events change or if the government or
18 the plaintiff feels they've marshaled evidence that is more
19 certain, more legally sufficient than what they've presented in
20 court over the last few hearings, the court will certainly
21 entertain any future requests for emergency relief. Otherwise,
22 this case will be put on its normal scheduling order when we
23 meet for our initial pretrial conferences that I believe are
24 previously scheduled in this case.

25 The court is always available if the parties want to

1 discuss concerns with the court and agreements that they may
2 ask the court to enter. Again, the court is always available
3 to do that.

4 That is the court's ruling. I'm not going to reduce
5 it to writing. I believe this speaks for itself. The court
6 simply is not granting the emergency relief requested by the
7 government and by the plaintiffs in this case.

8 All right. That concludes the court's proceedings
9 here today. Thank you-all for being here. The court will be
10 in recess.

11 **THE MARSHAL:** All rise.

12 **(Proceeding adjourned at 1:51 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

January 9, 2020

Dated

TONI HUDSON, TRANSCRIBER